

**STATEMENT OF
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U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
EXAMINING TAX-EXEMPT PRIVATE ACTIVITY BONDS
FOR
ALL ABOARD FLORIDA'S BRIGHTLINE PASSENGER RAIL SYSTEM
APRIL 19, 2018**

Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Grover Burtney, and I am a Deputy Assistant Secretary in the Office of the Under Secretary of Transportation for Policy at the United States Department of Transportation. In my role at the Department I oversee both the Office of Infrastructure Finance and Innovation and the Build America Bureau, the entities with historical and current responsibility managing the Private Activity Bond allocation process.

As you are aware, Private Activity Bonds (PAB) are a category of bonds issued by State or local governments to private investors. The interest on State or local bonds is normally not subject to federal taxation. But if State or local bonds are used to fund a private project, the interest is only tax-exempt if the bonds fit into one of several categories, including the category of "exempt facility bonds" at issue here.

Private Activity Bonds are a valuable tool in facilitating private investment in transportation infrastructure. Extending tax incentives to privately-financed projects or facilities that are similar to those enjoyed by publicly-financed projects or facilities helps to level the playing field and encourages increased private investment in transportation infrastructure.

Section 142 of Title 26 (the Internal Revenue Code) defines several different categories of “exempt facilities,” including multiple categories of transportation facilities, which may be financed using PABs. Many of these categories are subject to annual volume caps set by the statute and administered at the state level, while others are not limited in volume at all. Airports, docks and wharves, mass commuting facilities, and high-speed intercity rail facilities all fall into one of those categories with a volume cap. “Qualified Highway and Surface Freight Transfer Facilities,” a category established in 2005 by SAFETEA-LU, is unique in that it is subject to a nationwide volume cap of \$15 billion, which the Secretary of Transportation is directed to allocate in such as a manner as the Secretary determines to be appropriate. From enactment until today, approximately \$8.25 billion of this volume cap has been issued, and an additional amount of approximately \$2.8 billion is currently allocated.

The statute authorizing this category (26 USC 142(m)) defines “Qualified Highway and Surface Freight Transfer Facility” to mean, among other things, “any surface transportation project which receives Federal assistance under Title 23, United States Code (as in effect on the date of enactment of this subsection).” The Department has consistently understood this language to mean any surface transportation project which receives assistance from Title 23—not highways alone—is eligible for PAB issuance.

All Aboard Florida (AAF) originally applied for an allocation of \$1.75 billion in Private Activity Bond Authority for both Phase 1 and Phase 2 of their project—later named “Brightline”—in August of 2014. Brightline Phase 1 is passenger rail service from Miami to West Palm Beach and Phase 2 would extend the service to Orlando International Airport. The application indicated that in the time since the planning process for the AAF project had begun, the Florida Department of Transportation has spent Title 23 funds improving railway-highway grade crossings along the project corridor. Based on these expenditures, the Department determined that the AAF project was a “surface transportation project which receives Federal assistance under title 23” and it therefore qualified for a PAB allocation under 26 USC 142(m)(1)(A). The Department issued an allocation letter in December of 2014. The Department acted subsequently to extend that allocation twice.

In September of 2016, AAF submitted a new application requesting a \$600 million allocation for Phase 1 of the Brightline project. It simultaneously requested that the existing \$1.75 billion allocation be withdrawn. In November of 2016, the old allocation was withdrawn and the new allocation was granted. \$600 million in private activity bonds were subsequently issued for Phase 1 on December 19 of 2017. These bonds have helped privately fund construction of new stations and track infrastructure from Miami to West Palm Beach that will provide a new passenger rail transportation alternative in South Florida.

On December 5 of 2017, AAF applied for an allocation of \$1.15 billion in PAB authority for Phase 2 of the project. This allocation was granted on December 20, 2017, and has an expiration date of May 31, 2018. Should AAF apply for extension of their allocation, the Department will review that request using established procedures.

Thank you again for the opportunity to testify today regarding the Department's Private Activity Bond Allocation to the All Aboard Florida's Brightline Project. I look forward to your questions.